

### **REMARKS**

Claims 1, 3-6, 8-15, 20, 24-27, 30 and 31 are pending in the instant application. The Examiner has cited various informalities in claims 1, 8, 10, 12, 15 and 20. Claim 30 stands rejected under 35 USC § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 3-6, 8, 9, 11-15, 20, 27 and 30 stand rejected under 35 USC § 103(a) as being unpatentable over Yu [US 6103492] in view of Buck *et al* ["Photochemically induced dynamic nuclear polarization[...]" Biochemistry 77(9) pp5145-8]. The application has been amended. The specification has been amended. Claim 30 has been amended. Applicant respectfully submits that none of the amendments introduce new matter in contravention of 35 U.S.C. § 132. Reconsideration is respectfully requested.

#### **Correction of Page 1**

Applicants submit herewith a corrected page 1 of the instant application. Due to an error at the Receiving Office, the instant application published as WO 00/40988 with an incorrect page 1. Also enclosed herewith is an acknowledgement of their error and statement that the presently enclosed page 1 was originally submitted with the instant application.

#### **Claim Rejections – informalities**

The Examiner is referred to Applicant's previous response dated 03 April 2007 where the informality in connection with claim 12 was taken into account and the suggested amendment was made. Applicant therefore believes that this objection has been overcome.

Applicant respectfully maintains the position that the Examiner's objections to certain terms, namely 'hyperpolarising', 'hyperpolarisation', 'analysing', 'analysed', 'hybridisation', 'polarisation', etc., are improper. In addition to Applicant's comments in the response dated 03 April 2007, Applicant draws the Examiner's attention to the many granted US patent claims including the objected-to terms. As an illustration, the terms 'hyperpolarising' and/or 'hyperpolarisation' are used in US 7102354, US 6466814 and US 6278893; the terms 'analysing' and/or 'analysed' are used in US 6651459, US 6409671 and US 6344339; the

term 'hybridisation' is used in US 6054275, US 6326145 and US 7157226. Applicant therefore submits that not only is there a strong precedent within the USPTO that British English versions of technical terms are to be regarded as equivalent to their corresponding US English versions, but that these terms can and already should be searched. Furthermore, Applicant respectfully submits that searching for such terms would typically be conducted using a shortened string of letters designed to reveal the various conjugations of the terms – e.g., polar\$ or hybridi\$, etc. Thus, continued acceptance of the British variants of these technical terms is both consistent with current practice and searchable within the patent database.

In view of the remarks hereinabove, it is respectfully submitted that each of the noted objections have either been obviated by amendment or traversed as being improper. Reconsideration and withdrawal of the objections is respectfully requested.

#### **Claim Rejections – 35 USC § 112**

Claim 30 is rejected under 35 USC § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed.

Claim 30 has been amended to depend on claim 4 instead of on claim 5. As claim 4 does not relate to a range, the subject matter covered by claim 30 in its present form is therefore not a range within a range. Therefore, claim 30 is not vague and indefinite as to how many positions are being referred to. Furthermore, Applicant brings the Examiner's attention to the fact that the term 'artificially enriched abundance' is used in each of claims 4, 5 and 30, as claims 4 and 5 were previously amended for consistency.

In view of the amendments and remarks hereinabove, Applicant respectfully submits that each rejection under 35 USC § 112, second paragraph has been traversed. Reconsideration and withdrawal of the rejections are respectfully requested.

**Claim Rejections – 35 USC § 103**

Claims 1, 3-6, 8, 9, 11-15, 20, 27 and 30 are rejected under 35 USC § 112 as being unpatentable over Yu [US 6103492] in view of Buck *et al* [“Photochemically induced dynamic nuclear polarization[...]” Biochemistry 77(9) pp5145-8]. The rejection is respectfully traversed.

In response to Applicant’s previous arguments dated 03 April 2007, the Examiner asserts that Buck teaches the motivation to use the Yu hyperpolarisation technique in an assay. The Examiner’s logic is flawed as it is based on incorrect facts, i.e. Yu does not teach a hyperpolarisation technique. Indeed Examiner’s prior objections have taken this fact into account. Applicant respectfully submits that in presenting such inconsistent argumentation, the Examiner has not carried out her burden to establish a *prima facie* case of obviousness.

Furthermore, in response to Applicant’s arguments, the Examiner agrees with the Applicant’s view that the hyperpolarisation technique disclosed by Buck requires photoexcitation, which is not required by the Applicant’s claimed invention. This, in conjunction with the fact that Yu does not teach hyperpolarisation, effectively supports the observations presented in Applicant’s previous response. Consequently, Applicant respectfully submits that claim 1 of the present invention is patentably distinct over Yu in view of Buck and respectfully requests that the rejection should be withdrawn.

All the arguments presented by the Examiner in rejection of claims 3-6, 8, 9, 11-15, 20, 27 and 30 are based on the premise that claim 1 is unpatentable over Yu in view of Buck. Applicant respectfully submits that as claim 1 is patentable over Yu in view of Buck for the reasons presented above, each of claims 3-6, 8, 9, 11-15, 20, 27 and 30 are also patentable over the cited prior art. Reconsideration and withdrawal of these rejections are respectfully requested.

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In view of the amendments and remarks hereinabove, Applicant respectfully submits that the instant application, including claims 1, 3-6, 8, 9, 11-15, 20, 27, and 30, is allowable over the prior art. Favorable action thereon is respectfully requested.

Any questions with respect to the foregoing may be directed to Applicant's undersigned counsel at the telephone number below.

Respectfully submitted,

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